

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1090 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARSOTTAM BABABHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR KG PANDIT for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
MR BG PATANI for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 20/01/98

ORAL JUDGEMENT

The petitioner has filed this petition under articles 226, 227 of the Constitution of India and Section 482 of the Code of the Criminal Procedure (to be referred as the Code) challenging the orders passed by the Learned JMFC, Kalol in Misc. Criminal Application No.222/95 & 223/95.

The petitioner and the respondent no.2 had married according to their customary rites before 15 years. Because of strained relations, the respondent no.2 had deserted the petitioner and therefore the petitioner filed HMP No.45/91 in the District Court at Mahesana for divorce. A decree of divorce came to be granted in favour of the petitioner on 18.12.91. Thereafter it appears that the respondent no.2 filed application initiating Maintenance proceedings in the court of Learned JMFC at Kalol. Spl.Cri.Application No.570/93 was filed by the petitioner challenging the order of the Learned JMFC passed in Criminal Misc.Application No.203/93. The Court (Coram : N.J.Pandya,J) on 10.8.93 quashed and set aside the order passed in Criminal Misc. Application 203/93 and remanded the said application to the court of Learned JMFC, Kalol to be decided in accordance with the law.

Thereafter, the respondent no.2 wife filed application being Misc. Cri. Application No.222/95 and 223/95 u/s 125(3) of the Code. The petitioner also filed Criminal Misc. Application No.329/97 u/s 127(2) of the Code to revoke the order of Misc. Cri. Application No. 41/1988. Learned Advocate for the petitioner, Mr.K.G.Pandit has strenuously urged that the petitioner has obtained a decree of divorce on the ground of desertion against respondent no.2, wife and thereafter she is not entitled to claim maintenance u/s 125 of the Code. In support of this contention, Learned Counsel for the petitioner has relied upon a decision reported in 1991 (2) GLH Pg.158. This High Court has held in the above decision that the finding recorded by the Civil Court are binding on the Criminal Court for the purpose of awarding maintenance on application for maintenance under Section 125 of the Cr.P.Code. In view of this settled legal principle, I am of the opinion that the interest of justice would be served if the learned JMFC, Kalol is directed to decide afresh Misc. Cri. Application No.222/95 and Misc. Cri. Application No. 223/95 filed by the respondent no.2, alongwith Misc. Cri. Application No.329/97 filed by the petitioner in the same court for cancelling/revoking the orders passed in Misc. Cri. Application No.41/88 in the light of the principles laid down in the decision reported in 1991 (2) GLH Page-158.

As a result of the foregoing discussions, this Special Criminal Application is allowed. Orders passed at Annexures D & E of this petition are quashed and set aside. The Learned JMFC is directed to decide Cri.

Misc. Application No.222/95 and 223/95 filed by respondent no.2 and Misc. Cri. Application No.329/97 filed by the petitioner afresh and in accordance with law. The Learned JMFC is directed to decide the above applications within 8 weeks from the date of the receipt of the writ of this order. The petitioner is directed to pay to the respondent No.2 Rs.1000/- towards the costs of this petition. The amount of costs shall be deposited by the petitioner in the Trial Court on or before 15.2.1998. Rule is made absolute to the above extent. The Office is directed to send copy of this order to the court of Learned JMFC, Kalol immediately.

Dt: 20.1.1998. (M H Kadri, J)